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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,420	09/19/2003	Richard D. Fowler		7447

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DENVER, CO 80202

EXAMINER

GREEN, BRIAN

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/666,420	<b>Applicant(s)</b> FOWLER ET AL.	
	<b>Examiner</b> Brian K. Green	<b>Art Unit</b> 3611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 November 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Nov. 30, 2005 has been entered.

### ***Election/Restrictions***

Applicant's election without traverse of Group I. in the reply filed on Jan. 10, 2005 is acknowledged.

Claim 20 has been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in the reply filed on Jan. 10, 2005.

### ***Drawings***

The drawing for figure 1 filed on Nov. 30, 2005 is non-compliant since the applicant failed to place "Replacement Sheet" in the top margin as required by 37 CFR 1.121.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the

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following is required: Stating in claim 1 that the line of weakness is oriented substantially parallel with lines of product information printed on the first face.

### ***Claim Objections***

Claim 21 is objected to because of the following informalities: In claim 21, line 5, “an object” should apparently be “the object” to make it clear the applicant is referring to the object mentioned earlier in the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelsinger et al. (U.S. Patent No. 5,958,536) in view of Dronzek, Jr. et al. (U.S. Patent No. 5,543,191).

Gelsinger et al. shows in figures 1-2 a “shelf talker” comprising:

An adhesive layer (110) having upper and lower end portions (120,130) and first and second faces, said first face of said label sheet being adapted to have product information printed thereon, the label sheet having a line of weakness (see column 3, lines 20-25) formed within said label sheet intermediate the upper and lower end portions so the upper and lower end portions may be selectively separated from one another, and a liner sheet (160) operatively coupled to the

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adhesive and the second face of the label sheet. The first line of weakness (the vertical perforated line adjacent the lead line for numeral 130 in figure 2) extends between the upper and lower end portions since the line of weakness extends along substantially the entire length of the lower end portion. For example, the upper portion is considered to be the portion to the left of the first line of weakness and the lower end portion is considered to be the portion 130 or the portion to the right of the first line of weakness. Gelsinger et al. shows in figures 1-3 that the line of weakness (the vertical line of weakness adjacent the lead line for numeral 130 in figure 2) is oriented substantially parallel with lines of said product information (the straight lines on the left and right side of "MEDICINE", the printing on the lower portion, and the lines of some of the letters printed on the label, i.e. I, T, N, D, etc.) printed on the first face. It is not clear whether the adhesive layer (110)/label sheet of Gelsinger et al. includes a label sheet and an adhesive layer on the bottom surface of the label sheet. Dronzek shows in figures 1-3A that it is conventional to make an adhesive label in the form of a label sheet (8,10) having an adhesive on the bottom surface thereof, see column 4, lines 41-45. In view of the teachings of Dronzek it would have been obvious to one in the art to modify Gelsinger et al. by making the adhesive layer (110) in the form of a label sheet having adhesive on the bottom surface of the label sheet since this would allow indicia to be printed on the adhesive layer (110) in an easier manner and would create a more durable and aesthetically pleasing label. In regard to claim 2, Gelsinger et al. discloses the use of a line of weakness (see column 3, lines 26-32) in the liner sheet to define a secondary liner. In regard to claim 3, Gelsinger et al. shows in figure 2 that the secondary liner (170) is located closely adjacent to the lower end portion. In regard to claim 4, Gelsinger et al. shows in figure 2 that the size and shape of the secondary liner (170) is approximately the shape

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and size of the lower end portion (when the lower end portion is considered to be portion (130). In regard to claim 5, Gelsinger et al. shows in figure 2 that the secondary liner is slightly smaller in size than lower portion when the lower portion includes all of the portion to the right of the line of weakness except for (140). In regard to claim 6, the label of Gelsinger et al. would work as disclosed in claim 6. In regard to claim 7, as broadly defined, the upper end portion of Gelsinger et al. would approximate the size of particular sized shelf, i.e. a shelf similar to the size shown in the applicant's figure 3. Further, it is considered within one skilled in the art to vary the particular size of the upper portion as desired, i.e. the size of the upper portion would be made based upon the size of the article in which the upper portion is going to be adhered to. In regard to claims 8 and 9, Dronzek, Jr. et al. discloses the idea of making the release liner from a non-curl material, i.e. polypropylene, see column 5, lines 15-25 and column 6, lines 9-34. In view of the teachings of Dronzek, Jr. et al. it would have been obvious to one in the art to modify Gelsinger et al. by making the release liner from a non-curl material (polypropylene) since this would help to prevent the label and label sheet from curling which would allow the labels to be removed from a label sheet in an easier and faster manner and would allow the labels to be applied to a surface in an easier and faster manner. In regard to claim 10, the particular method used to print the information on the label is not a patentable feature in an article claim. In regard to claim 11, the particular indicia placed on the lower end portion is not a patentable feature, any type of information can be placed on the lower end as desired. In regard to claim 12, Gelsinger et al. does not disclose placing a plurality of label sheets on the liner. Dronzek, Jr. et al. shows in figure 1 the idea of placing a plurality of label sheets (4) onto a liner (6). In view of the teachings of Dronzek, Jr. et al. it would have been obvious to one in the art to modify Gelsinger

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et al. by placing a plurality of the label sheets onto the liner since this would allow a plurality of the label sheets to be held, transported, and stored in an easier and more convenient manner. In regard to claim 21, Gelsinger et al. shows in figure 2 that the secondary liner (170) is coupled to the lower end portion (130) of the label sheet, the secondary liner having a shape approximating a shape of the lower end portion, and the lower end portion extends substantially vertically below the upper end portion and not in contact with the object (400) when the object is held/placed/stored/transported/etc. in a generally horizontal position. For example, when the contents in the object are being poured out, the longitudinal axis of the object will at times be along a horizontal axis and the lower portion will be located vertically below the upper portion at given times depending upon how the object is being held.

Claim 21 is rejected under 35 U.S.C. 102(b) as being anticipated by Korondi, Jr. (U.S. Patent No. 5,702,127).

Korondi, Jr. shows in figures 1-3 a “shelf talker” comprising:

A label sheet (20) having upper and lower end portions (32 and 36 or 36 and 34) and first and second faces, said first face of said label sheet being adapted to have product information printed thereon, the label sheet having a line of weakness (40) formed within said label sheet extending completely between the upper and lower end portions and defining a line separating the upper and lower portions so the upper and lower portions are separated from one another when the label sheet is broken along the first line of weakness, and a liner sheet (12) operatively coupled to the adhesive and the second face of the label sheet. The appliance upon which the label sheet is attached is considered to be the “object” and the lower end portion (36) extends vertically below

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the upper end portion and not in contact with the object. The secondary liner (12, the portion between the cuts 50) has a shape (rectangular) approximating a shape (rectangular) of the lower end portion.

### ***Response to Arguments***

Applicant's arguments filed Nov. 30, 2005 have been fully considered but they are not persuasive.

The applicant argues that Gelsinger et al. fails to show a line of weakness which is parallel to the line of printing. The examiner disagrees since Gelsinger et al. shows in figures 1-3 that the line of weakness (the vertical line of weakness adjacent the lead line for numeral 130 in figure 2) is oriented substantially parallel with lines of said product information (the straight lines on the left and right side of "MEDICINE", the printing on the lower portion, and the lines of some of the letters printed on the label, i.e. I, T, N, D, etc.) printed on the first face.

The applicant argues that Korondi fails to show a secondary liner having a shape approximating the shape of the lower end portion. The examiner disagrees since Korondi shows in figure 1 that the secondary liner (12, the portion between the cuts 50) has a shape (rectangular) approximating a shape (rectangular) of the lower end portion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K. Green whose telephone number is (571) 272-6644. The examiner can normally be reached on M-F 7am-3:30pm.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on (571) 272-6651. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
BRIAN K. GREEN  
PRIMARY EXAMINER

Bkg  
Feb. 10, 2006